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PRINTED BY BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 612

EDMUND C. SHERIDAN, *Appellant,*

v.

ALFRED GARDNER, et al., *Appellees.*

On Appeal From the Superior Court of Massachusetts

APPELLANT'S BRIEF IN OPPOSITION TO MOTION TO DISMISS

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1. Appellant has raised a substantial constitutional issue concerning the validity of the Resolve because of the mingling of legislative-investigatory and prosecutory functions.

The appellants position on this point is simply that the Resolve has been held to be in legal effect a statute, *Corcoran v. Commonwealth*, 335 Mass. 29; that under

this Resolve the liberty of the appellant is being unconstitutionally invaded by compelling his appearance; that this denial of liberty is in violation of the Fourteenth Amendment because, among other matters, the Resolve on its face (by authorizing the presentation of evidence to a grand jury by a legislative commission) and as construed and applied by the appellees (as made clear in the Commission's annual reports) combines prosecutory and legistative-investigatory functions so as to deny due process of law.

There can be no adequate state ground for circumventing the fededal due process issue. The Massachusetts courts have in fact ruled that the appellant must answer the summons of the Commission. In short, they have upheld the Resolve, as a statute, on its face and as construed and applied, despite appellant's claim of federal constitutional rights. This point was raised in the original petition, and is adequately set forth in the Jurisdictional Statement (pp. 7, 8), where it is urged that due process sets limits on the use of legislative investigatory agencies as a cloak for pursuing prosecutory purposes.

In this connection it is of the utmost importance to observe that the Massachusetts Supreme Judicial Court did not say the Commission-appellees had not presented or do not present evidence to grand juries and thereby attempt to secure indictments. The Massachusetts court said merely that the record *in this case* shows no such action (Jurisdictional Statement p. 8a). Appellant urges that if the question of the actual practice of the Commission becomes critical to the resolution of the case at bar, this Court should take judicial notice of relevant admissions by the Commission-appellees and its attorneys entered in the records

of other cases but which were not on record when the instant case was briefed for the Supreme Judicial Court. See: *Gardner* v. *Callahan,* — Mass. —, 196 NE 2d 301, Record, p. 45, Statement of Agreed Facts, Case No. 13,097; *Commonwealth* v. *Hanley,* Mass. Superior Court, Suffolk County Nos. 10272-86 (1964); *Commonwealth* v. *Giles,* Mass. Superior Court, Essex County, No. 54475 (1964). If judicial notice is not taken, it is urged that this case be remanded to the Massachusetts Superior Court for further hearing on this point should clarification of this question be essential to the adjudication of the case. See Wigmore on Evidence, Section 2579 (3rd ed. 1940); *Butler* v. *Eaton,* 141 U.S. 240.

Appellant is especially concerned about this matter because of the grossly misleading declaration contained in the Motion to Dismiss filed on behalf of the Commission (pp. 4, 5) denying that evidence developed by the Commission has been presented to the grand jury by the Commission or its counsel.

2. Appellant has properly raised a substantial issue whether the Resolve, on its face, enacts a bill of attainder. The substance of this point is set forth in the Jurisdictional Statement. Insofar as appellee's motion is based upon the argument that appellants standing to raise the issue need not be recognized because the Attorney General can file a writ of quo warranto, it is submitted that this does not make judicial review available at the instance of the affected class of persons. Nothing makes this clearer than the fact that the Attorney General has elected to defend the Resolve in this respect.

3. The Motion to Dismiss filed by the Attorney General of Massachusetts is not properly before this Court,

in that he is not a party to the case. Although the Attorney General received notice of these proceedings as required by Massachusetts G. L. (Ter. Ed.) c 231A, § 8, it is clear that under the aforesaid statute this notice does not make him a party, *City Manager of Medford* v. *Civil Service Commission*, 329 Mass. 323, 330, therefore the Attorney General has no standing to file motions in this case.

The questions raised in the Jurisdictional Statement are substantial and properly before this Court. Probable jurisdiction should be noted.

Respectfully submitted,

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